

*Dame JANE BAMPFYLD, the Widow and Relict of Sir COPPLESTON BAMPFYLD,
Baronet, Deceased, Appellant.*

*Sir COPPLESTON WARWICK BAMPFYLD, Grandson and Heir of the said Sir Coppleston,
an Infant, by Mary Bampfylde, Widow, his Mother and Guardian, Respondent.*

The Case of the Appellant.

THE Appellant being the Eldest Daughter of Sir Courtney Poole, Baronet, who had only one Son and another Daughter, and an Estate of near 3000 *l. per Annum*; Sir Coppleston Bampfylde being a Widower, and having a Son by a former Wife, on whom great part of his Estate was Entailed, married the Appellant without treating with her Father, or his Knowledge or Consent; so that no Agreement was made for any Settlement on that Marriage, however the Appellant had by the Gift of an Aunt, and otherwise, about 2500 *l.*

Sir Coppleston Bampfylde, having by a Settlement made upon his first Marriage, in February 1659. reserved a Power to Demise and Lease his Demeasne Lands of Warleigh (except some Closes) part thereof for the natural Life of any Woman, which he should Marry after the Death of Margaret his then Wife, or otherwise, from time to time to charge the said Lands with any Rent charge, not exceeding 400 *l. per Annum*, for the Livelihood and Maintenance of any such Woman by Deed, Dated November 28 1674, reciting such Power, and as a Provision for the Appellant in case she should survive him, Demised so much of Warleigh as he had power to Lease to Mr. Poole the Appellant's Brother, and others, for the Appellant's Life, in Trust, and for the Benefit, and as a Provision for the Appellant, if she should survive Sir Coppleston; and thereby Covenanted for further Assurance, *pro ut* Deeds, which Lands were worth at least 400 *l. per Annum*.

That after the Execution of this Deed, Sir Coppleston to promote his only Son by his first Wife in Marriage with one Mrs. Clifford, and for Eight Thousand Pound Portion, Articled to settle great part of his Estate on that Marriage, to the value of Two Thousand Pound *per Annum*, and upwards, whereof part was for a present Maintenance of his Son and Wife, and for the Wife's Joynture, with remainder to their Issue in Tail: But by the Articles Sir Coppleston was to have power during his Life to grant Estates in all the Premises, whereof he was to be Tenant for Life (except the Mansion-house and Barton of Poltimore) for any Estate not exceeding four Lives, and to enable such Settlement to be made the Appellant joynd in a Fine with Sir Coppleston and his Son of all his Devonshire Estate, whereby she destroyed the Settlement made on her of Warleigh, and barred all Dower, and what was before settled on her of Warleigh, was afterwards settled for part of the Maintenance for Sir Coppleston's Son, and as part of the Joynture for his Wife: And the Appellant submitted her self wholly to the will and bounty of Sir Coppleston her Husband, as to what he should afterwards act and do by way of Provision for her, in case she survived him.

Afterwards Sir Coppleston by Deed did settle some Mannors and Lands not included in the Marriage Settlement made on his Son to and for the use of the Appellant for Life, of about half the value the former Lands settled on her were worth, and Sir Coppleston knowing they were not sufficient for her Maintenance, and intending a better Provision for her suitable to the Quality of his Widow in case she should survive him, made his Will all of his own Writing and Drawing, and duly published and executed the same, the 24th of August 1691, whereby he devised to the Appellant in manner following, *viz.*

*I give unto my beloved Wife, Dame Jane, as an addition to her Maintenance during her Life, my House and Park of Northmolton, likewise my Park lying one part of it in Pinhoe, and the other part of the Park in Broadcliff. I likewise give her for her Life the Field called the Farthings, lying next Mr. Kirkham's Grounds. I give her all my Plate, China, and every thing that is within my House and Out-Houses, I mean, all the Goods within the Walls of Poltimore; I mention no Rooms nor Goods in them, but I intend she shall have every thing as if particularly mentioned. I likewise give her all my Coaches and Chariots and Harnes to them, with all my Coach-horses, and Six other Horses of my Stock, that she shall choose out of my Stock. I give her likewise all my Books, all the Money I have in the House of Poltimore, or owing to me, whether Silver or Gold: All these things my Will is that my Wife Jane enjoy without fraud or trouble. There are other Legacies given to others by the Will, and after those he concludes his Will. I desire my Executor to pay my Brother Amias Bampfylde his Annuity of 80 *l. Yearly*, and Mrs. Grace Glanvill hers of 101. *Yearly*. I likewise appoint, and it is my Will, that this my Will be performed within Twelve Months after my Decease, by Coppleston Warwick Bampfylde Esq; my Grandson, who I make my sole Executor *pro ut* Will. In February after the date of which Will, Sir Coppleston dyed.*

Thereupon Mary Bampfylde, Sir Coppleston's Mother, took Administration with the Will annexed of Sir Coppleston, during the Respondent's minority, and claimed the whole Personal Estate; and by reason of the Debts of Sir Coppleston, and Bonds given to pay those Annuities and Funeral Expences, the Appellant without undertaking to discharge them could not have her Legacies, and thereupon submitted and agreed to take the Executorship on her, and paid those Annuities and Debts, Funeral Expence and Lagacies to the value of 1500 *l.* and upwards, and nearly the value of the whole personal Estate, and was deny'd the Possession of the Lands devised to her: For that by the Marriage Settlement, made on the Sons Marriage, the power reserved to Sir Coppleston to grant Estates, was limited to be by his Deed or Deeds, and a Will is not a Deed, and so no Estate could in strictness of Law pass by the Will to the Appellant, and so the Respondent entred, and ever since Sir Coppleston's Death, hath had the Rents and Profits of the Lands devised to the Appellant, whereupon

Heeper Somer The Appellant exhibited her Bill in Chancery to be relieved, and to have the Possession of those Lands decreed her according to the express Will of Sir Coppleston. But upon hearing the Cause the Ninth of July last was denied Relief therein, and her Bill dismist, from which Dismission she now Appeals to your Lordships.

1st. For that Sir Coppleston had an undoubted Power to have granted the Lands so devised to the Appellant, had he done it by Deed as he hath done it by Will: And whereas 'tis only devised for the Appellant's Life, he could have granted four Lives by Deed; And though the Settlement reduced his Power of granting Estates to be by Deed, yet the Precedent Articles thereto express his power to be generally to have a power to grant without saying by Deed or Will, but was to have power to grant at his will and pleasure.

2^{dly}. The Devise to the Appellant is not altogether voluntary, but is in the nature of a Recompence and Compensation, for her quitting and parting with a better and more valuable Estate, well settled on her, and to advance the Respondent's Father in Marriage, and gain the Settlement, whereof the now Respondent hath the Benefit and the Limitation to him by the Settlement, is subject to and charged with the power to grant Estates not exceeding four Lives, so that he is but in the nature of a Purchaser of the Reversion after such Estates, and cannot therefore be wronged by the Appellant's Enjoyment of the Premises devised to her, they being actually in the Power of his Grandfather, Sir Coppleston, to have granted four Lives therein, and the will and intent of granting them to the Appellant for Life, is fully manifested, both by the Will it self and the Testators own Declaration, but a For-night before his Death, when he caused several Persons to be called to him, and thus expressed himself to them: *Gentlemen, I have made a Will, but whether it be according to Law I know not, as I am a Gentleman and no Lawyer, it may not be according to Law. I desire you Three to see my Will performed, according to the true intent and meaning thereof; and that my Wife, meaning the Appellant, may have no trouble in it, but that she may quietly enjoy what I have given her by my Will, and desired them to take notice what he said to them, which was fully proved in Chancery.*

3^{dly}. When Powers have not been literally or strictly pursued, and Persons have mistaken and failed in the Execution of them, yet where it hath been in the Case of Creditors, or Provision for Children, and where partly voluntary, Your Lordships upon the Circumstances of such Cases, and to support the good will and intent of Persons so failing in the Execution of their Power have often relieved, as hath the Court of Chancery, and the Common Law in some sort hath countenanced the same, whereof some Cases and Presidents will be humbly offered to your Lordships.

4^{thly}. In case the Appellant be not herein relieved by your Lordships, Sir Coppleston's Will will be rendered ineffectual in all respects, his Personal Estate being swallowed up by the Payment of Debts, Annuities, and Funeral Expences, which by his Will was intended to be exempt, and given freely to the Appellant: And this Case being a Provision for a Wife, and for her Maintenance and Support, 'tis humbly submitted to your Lordships if it merit not the like Consideration and Relief, as for a Child, being such great and meritorious Ground for it as having quitted a better Estate for it, so that the Appellant most humbly hopes your Lordships will find just Cause to reverse and set aside the said Dismission, and to relieve the Appellant so far as she may have the Possession of the Premises devised to her, and Enjoy the same during her Life, and have the Rents and Profits thereof since her Husband's Death.

The Case of *Y^e Lady Baumpfy & Appoa^t*

against

J^r Copplesdon Warwicke } Respond^t
Baumpfy &c. —

Saturday
Doct^r heard ~~ff~~ 19th January
1694

